

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Chelsea Yogerst	Team: Squad #12	CCRB Case #: 201608571	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 10/07/2016 10:37 PM	Location of Incident: § 87(2)(b)	Precinct: 100	18 Mo. SOL 4/7/2018	EO SOL 4/7/2018	
Date/Time CV Reported Tue, 10/11/2016 8:14 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Tue, 10/11/2016 8:14 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. SGT Bilal Ates	03374	934429	100 PCT
2. POM Julio Alvarez	07881	927779	100 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Bilal Ates	Discourtesy: Sergeant Bilal Ates spoke discourteously to § 87(2)(b)	§ 87(2)(b)
B.POM Julio Alvarez	Abuse: Police Officer Julio Alvarez interfered with § 87(2)(b)'s use of a recording device.	§ 87(2)(b)
C.POM Julio Alvarez	Abuse: Police Officer Julio Alvarez searched § 87(2)(b)'s recording device.	§ 87(2)(b)
D.POM Julio Alvarez	Abuse: Police Officer Julio Alvarez deleted information on § 87(2)(b)'s electronic device.	§ 87(2)(b)
E.POM Julio Alvarez	Abuse: Police Officer Julio Alvarez frisked § 87(2)(b)	§ 87(2)(b)
F.POM Julio Alvarez	Abuse: Police Officer Julio Alvarez searched § 87(2)(b)	§ 87(2)(b)
G.SGT Bilal Ates	Abuse: Sergeant Bilal Ates searched the vehicle in which § 87(2)(b) was an occupant.	§ 87(2)(b)
H.SGT Bilal Ates	Discourtesy: Sergeant Bilal Ates spoke discourteously to § 87(2)(b)	§ 87(2)(b)

### Case Summary

On October 11, 2016, § 87(2)(b) filed this complaint on behalf of himself and § 87(2)(b) with the CCRB via email.

On October 7, 2016, at approximately 10:37 p.m., Sergeant Bilal Ates and Police Officer Julio Alvarez, both of the 100<sup>th</sup> Precinct, responded to § 87(2)(b) in Queens after receiving a 911 call that § 87(2)(b) was breaking into a residence. Sgt. Ates allegedly said spoke discourteously to § 87(2)(b) (**Allegation A**). PO Alvarez allegedly interfered with § 87(2)(b)'s ability to video record, searched his recording device and deleted information on his electronic device (**Allegations B -D**). PO Alvarez allegedly frisked and searched § 87(2)(b) (**Allegations E and F**). Sgt. Bates searched § 87(2)(b)'s vehicle (**Allegation G**). Sgt. Ates allegedly spoke discourteously to § 87(2)(b) (**Allegation H**). § 87(2)(b) was arrested for § 87(2)(b) and his criminal case is still on-going (06 BR). § 87(2)(b) was arrested for § 87(2)(b) and was released from Queens Central Booking after his case was dismissed (08 BR).



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Surveillance video footage from the outside of § 87(2)(b) in Queens was provided by § 87(2)(b) and captured Sgt. Ates searching § 87(2)(b)'s vehicle.

### Mediation, Civil and Criminal Histories

- This case was not suitable for mediation because of § 87(2)(b)'s arrest.
- § 87(2)(b) and § 87(2)(b) did not file a Notice of Claim (01 BR).
- § 87(2)(b), § 87(2)(c)

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### Civilian and Officers CCRB Histories

- This is § 87(2)(b)'s eighth CCRB complaint. § 87(2)(b)

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This is § 87(2)(b)'s first CCRB complaint (13 BR).

- Sgt. Ates has been a member of the service for twelve years and thirty-seven allegations in fourteen cases. In case 200704116, a premise entered and/or searched allegation was substantiated and the Board recommended charges; he received instructions. § 87(2)(g)  
§ 87(4-b), § 87(2)(g)
- PO Alvarez has been a member of the service for fifteen years and has six allegations in three cases. Of these complaints, there are no substantiated allegations § 87(2)(g)

### Potential Issues

§ 87(2)(b) confirmed that she was the owner of the apartment that § 87(2)(b) attempted to break into and was responsible for calling 911, but did so after her tenants informed her as to what was occurring. She denied that she witnessed the incident and only arrived to the scene once § 87(2)(b) had been arrested and removed from the scene.

### Allegations Not Pleaded

§ 87(2)(b) stated that as soon as the officers approached him, he was arrested. § 87(2)(g)  
§ 87(2)(b) stated that once Sgt. Ates returned from searching his vehicle, he was arrested. Although § 87(2)(b) denied that he had narcotics in his vehicle, Sgt. Ates testified that a small quantity of marijuana was found in his glove box and he subsequently charged with § 87(2)(b). § 87(2)(g)

### Findings and Recommendations

#### Recommendations

#### Allegation A-Abuse of Authority: Sergeant Bilal Ates spoke discourteously to § 87(2)(b)

§ 87(2)(b) stated that when Sgt. Ates approached him, he addressed him by his name and asked him why he was in Far Rockaway. In response, § 87(2)(b) asked the officers who they were and where they were from because he did not recognize Sgt. Ates. Sgt. Ates then said, “These are the motherfuckers that got us GO’d” to another officer.

§ 87(2)(b) denied hearing officer use profanity during the incident, but stated that he could not hear everything that was being said because he was in the police vehicle.

Sgt. Ates denied making the alleged statement and denied using profanity with § 87(2)(b) during the incident.

PO Alvarez denied hearing Sgt. Ates make the alleged statement and denied hearing him use profanity throughout the incident.

§ 87(2)(g)

**Allegation B-Abuse of Authority: Police Officer Julio Alvarez interfered with § 87(2)(b)'s use of a recording device.**

**Allegation C-Abuse of Authority: Police Officer Julio Alvarez searched § 87(2)(b)'s recording device.**

**Allegation D-Abuse of Authority: Police Officer Julio Alvarez deleted information on § 87(2)(b)'s electronic data.**

§ 87(2)(b) stated that when he approached the officers and began recording on his cell phone, PO Alvarez immediately came towards him and took the phone out of his hands. PO Alvarez then placed the phone face down on the hood of a nearby vehicle, causing the recording to stop. PO Alvarez did not say anything to § 87(2)(b) regarding the fact that he had been recording. Following his arrest, § 87(2)(b) had his phone returned to him and realized that the two-minute video that he had recorded prior to having his phone taken had been deleted.

§ 87(2)(b) stated that § 87(2)(b) began to record the incident on his cell phone from approximately ten feet away. During this time, the officers asked § 87(2)(b)'s neighbors if § 87(2)(b) was involved in the alleged crime, to which they replied that he was not involved. An officer then approached § 87(2)(b) and seized his phone that he was using to record.

§ 87(2)(b) did not believe that § 87(2)(b) attempted to video record the officers using his cell phone and denied seeing officers seize § 87(2)(b)'s phone or prevent him from recording.

PO Alvarez denied that § 87(2)(b) took his phone out during the incident and denied that he took § 87(2)(b)'s phone away or interfered with his ability to video record. He was not aware of § 87(2)(b) attempting to record at any point. PO Alvarez denied that he or any other officers deleted video footage from § 87(2)(b)'s phone.

Sgt. Ates did not recall § 87(2)(b) having his phone out or attempting to video record. He denied that any officers seized § 87(2)(b)'s phone or interfered with his ability to video record.

§ 87(2)(g)

**Allegation E-Abuse of Authority: Police Officer Julio Alvarez frisked § 87(2)(b)**

**Allegation F-Abuse of Authority: Police Officer Julio Alvarez searched § 87(2)(b)**

It is undisputed that PO Alvarez frisked and searched § 87(2)(b) after he was handcuffed and placed under arrest. However, it is disputed whether PO Alvarez conducted a separate frisk and search of § 87(2)(b) prior to him being arrested.

§ 87(2)(b) stated that when Sgt. Ates asked him and § 87(2)(b) if they were together, he explained that they were not together and he had not done anything wrong. In response, Sgt. Ates said he recognized both of them from a prior vehicle stop. PO Alvarez then patted all of § 87(2)(b)'s pockets and up and down his entire body. § 87(2)(b) had his wallet and two envelopes of cash, one of which contained \$500, in his right back pants pocket and loose change in his front right pocket. § 87(2)(b)'s house and vehicle keys were either in his front left pants pocket or in his hoodie pocket. PO Alvarez reached into each of § 87(2)(b)'s pockets, removed each item and placed them on the same vehicle hood. He did not say what he was looking for during the search. Once Sgt. Ates returned from searching § 87(2)(b)'s vehicle later on, he

instructed PO Alvarez to arrest § 87(2)(b) PO Alvarez immediately handcuffed § 87(2)(b) and searched him for a second time.

§ 87(2)(b) stated that he and the neighbors told the officers that § 87(2)(b) was not involved. Sgt. Ates patted down § 87(2)(b)'s entire body and reached into his pocket to retrieve his vehicle keys. When § 87(2)(b) asked why he was being arrested, the officers told him that he was not getting arrested and was just being detained.

§ 87(2)(b) stated that an officer searched § 87(2)(b)'s pockets, but he did not recall if § 87(2)(b) was handcuffed at the time and was unable to see whether the officer reached into the pockets or just patted over them because it was dark and he was in the police vehicle. He did not recall if officers removed anything from § 87(2)(b)'s person.

PO Alvarez acknowledged that he frisked and searched § 87(2)(b) incident to his arrest, but did not recall patting down or reaching into § 87(2)(b)'s pockets, prior to him being arrested and handcuffed. He also did not recall removing anything from § 87(2)(b)'s person and denied being in possession of his vehicle keys, prior to his arrest.

Sgt. Ates did not recall seeing officers make physical contact, frisk or search § 87(2)(b) prior to him being arrested for the marijuana that was found in his vehicle.

§ 87(2)(g)  
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**Allegation G-Abuse of Authority: Sergeant Bilal Ates searched the vehicle in which § 87(2)(b) was an occupant.**

Video footage shows Sgt. Ates walk towards the driver's side of § 87(2)(b)'s vehicle and shine his flashlight into the front and back windows from the outside. Sgt. Ates then approaches the front door of a residence that the vehicle is parked in front of and rings the doorbell. Sgt. Ates waits for approximately a minute and a half, but no one answers the door. Sgt. Ates then opens the front driver's side door and enters into § 87(2)(b)'s vehicle. For approximately a minute, Sgt. Ates searches the front driver's side portion of the vehicle using his flashlight. It is difficult to see where Sgt. Ates searches specifically because it is dark. Sgt. Ates then closes the front driver's side door and walks towards the rear of the vehicle. During this time, it appears that Sgt. Ates is looking at a small item that he is holding in his left hand and eventually puts into his pocket, but it cannot be determined what this item is. Sgt. Ates then opens up the trunk of the vehicle and searches it for twenty five seconds, before he closes it and walks away from the vehicle.



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§ 87(2)(b) stated that once Sgt. Ates observed his vehicle keys on the hood of the vehicle, he took them and began to press the alarm button. He then walked up the block in the direction of § 87(2)(b)'s vehicle, which was parked in the driveway of § 87(2)(b). As he was walking away, Sgt. Ates informed § 87(2)(b) that he was going to verify that he lived there. As soon as Sgt. Ates walked away down the street, § 87(2)(b) observed the interior

lights of his vehicle turn on, but he was unable to see what Sgt. Ates was doing because he was too far away. When Sgt. Ates returned after five minutes, he instructed the officers to handcuff and arrest § 87(2)(b). § 87(2)(b) denied that he had narcotics in his vehicle and denied he was informed where the alleged narcotics were found in his vehicle specifically.

§ 87(2)(b) stated that once Sgt. Ates had the vehicle keys, he hit the alarm button and made it clear that he was looking for § 87(2)(b)'s vehicle, which was locked and parked down the street in the driveway of his residence. Sgt. Ates then walked towards the direction of the vehicle. Although § 87(2)(b) did not see Sgt. Ates search the vehicle, he discovered that he had done so when he reviewed the video surveillance later on.

§ 87(2)(b) denied seeing any officers search a vehicle and denied hearing any officers discuss searching a vehicle. He denied seeing any officers seize vehicle keys or set off the alarm of a vehicle.

Sgt. Ates testified that when § 87(2)(b) arrived to the scene, he asked the officers what was going on and why § 87(2)(b) was being arrested. Sgt. Ates explained to him that § 87(2)(b) was being arrested for breaking into a residence. § 87(2)(b) told the officers that § 87(2)(b) was his uncle and that they both lived at the residence that § 87(2)(b) had been attempting to break into. When Sgt. Ates asked § 87(2)(b) to prove that they lived at the residence, § 87(2)(b) told him that he had the keys to the residence in his vehicle. Sgt. Ates asked § 87(2)(b) where his vehicle was, to which, § 87(2)(b) replied that it was parked down the block and pointed it out. § 87(2)(b) told Sgt. Ates that he could retrieve the residence keys from his vehicle and use them to confirm that § 87(2)(b) lived at the residence. § 87(2)(b) repeated that his vehicle was parked down the block and was parked in a driveway. Sgt. Ates then asked § 87(2)(b) if he lived in the residence that the vehicle was parked in front of. § 87(2)(b) denied that he lived in that residence and said that he had just parked his vehicle in the driveway. When Sgt. Ates asked § 87(2)(b) if he parked in someone else's driveway without permission, § 87(2)(b) told him that it was nothing like that and instructed him to go get the keys from his vehicle. In response, Sgt. Ates said, "Okay." According to Sgt. Ates, § 87(2)(b) voluntarily handed him his vehicle keys. Sgt. Ates denied that he requested the keys from § 87(2)(b) and denied that § 87(2)(b) was under arrest at this time. Sgt. Ates denied that § 87(2)(b) requested to retrieve the keys from the vehicle himself and denied that he informed Sgt. Ates where the residence keys were located within his vehicle specifically.

Sgt. Ates approached § 87(2)(b)'s vehicle by himself, unlocked it and opened the front passenger door of the vehicle. Upon doing so, he immediately smelled marijuana, but was unable to determine where the smell was emanating from specifically because it was so potent. Sgt. Ates denied that he entered into the vehicle from any additional doors and denied that he went through the back of the vehicle. Sgt. Ates looked in the common areas of a vehicle where keys are kept such as the cup holders, the center console and the side of the doors. Lastly, Sgt. Ates opened up the glove box and observed marijuana in a clear bag. Sgt. Ates could not approximate how much marijuana was in the container, but described it as a personal amount and less than a pound. The smell of marijuana was all around the vehicle and remained the same potency once the glove box was opened, leading Sgt. Ates to suspect that § 87(2)(b) may have been smoking in the vehicle earlier. Sgt. Ates denied that he had any idea that there were narcotics in the vehicle prior to him approaching it and denied that § 87(2)(b) mentioned the marijuana. Sgt. Ates denied that he searched anywhere else in the vehicle including the trunk and denied that anything else was removed from the vehicle. The residence keys were never recovered.

Sgt. Ates was presented with the video surveillance footage of the incident and identified himself as the officer that could be seen searching § 87(2)(b)'s vehicle. Sgt. Ates did not mention searching the trunk initially because he had forgotten that he had done so. Sgt. Ates explained that after he found the marijuana in the glove box, § 87(2)(b) was under arrest and the vehicle belonged to the officers until it was vouchered. Sgt. Ates searched the trunk because he had just recovered marijuana and wanted to ensure that there were no additional drugs or weapons in the vehicle that could further jeopardize the officers' safety because they were going to transport the vehicle back to the stationhouse. Sgt. Ates believed that there could be further drugs in the back of the vehicle because of the strong odor of marijuana when he initially opened the vehicle door. Sgt. Ates denied that there were any additional reasons that the trunk was searched at this time and denied that anything was recovered from the trunk.

PO Alvarez was never made aware and did not observe Sgt. Ates search a vehicle at the scene. He denied hearing a discussion between § 87(2)(b) and Sgt. Ates regarding his vehicle and denied seeing § 87(2)(b) provide his consent or vehicle keys to Sgt. Ates. PO Alvarez denied seeing Sgt. Ates leave the scene at any point and denied seeing him use vehicle keys to set off a vehicle alarm. He also denied hearing Sgt. Ates mention that something had been recovered from a vehicle at the scene.

PO Stango's memo book corroborates Sgt. Ates' testimony (05 BR). § 87(2)(b)'s arrest report states that he was found to be in possession of a quantity of concentrated marijuana during the investigation of a burglary in progress (08 BR). The property vouchers show that § 87(2)(b) was in possession of alleged marijuana in vegetative form packaged in a glassine envelope (14 BR).

According to People v. Cosme, 48 N.Y. 2d 286 (1979), the police may lawfully conduct a warrantless search when they have obtained the voluntary consent of a party who possess the requisite degree of authority and control over the personal property in question (17 BR). People v. Gonzalez, 39 N.Y. 2d 122 (1976), states that the factors to consider in determining the voluntariness of the individual's consent are whether the individual (1) was in custody or under arrest; (2) was confronted by police or law enforcement officials; (3) had been evasive or uncooperative; and (4) was advised of the right to refuse (16 BR). According to People v. Poinvil N.Y. Slip OP 25102 (2015), consent is voluntary when it is a true act of the will, an unequivocal product of an essentially free and unconstrained choice (15 BR). People v. Johnson 901 N.Y.S 2d 909, states that the smell of marijuana in a vehicle is sufficient enough to provide police who are trained and experienced in the use of marijuana with probable cause to search a vehicle (18 BR).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation H-Abuse of Authority: Sergeant Bilal Ates spoke discourteously to § 87(2)(b)**

§ 87(2)(b) stated that when Sgt. Ates returned from searching the vehicle, an officer informed him that § 87(2)(b) was a good guy. Sgt. Ates responded by saying that § 87(2)(b) was not a good guy at all and referred to him as a “piece of shit.” He then whispered into § 87(2)(b)'s ear that he did not deserve to walk the earth and if he had it his way, he would not. § 87(2)(b) took this to be a threat and asked Sgt. Ates why he would say that. § 87(2)(b)

§ 87(2)(b) denied hearing officers use profanity or threaten § 87(2)(b) however, he could not hear everything that was being said because he was in the police vehicle.

Sgt. Ates denied making the alleged statements and denied using profanity or threatening § 87(2)(b) during the incident.

PO Alvarez denied hearing Sgt. Ates make the alleged statements and denied hearing him use profanity or threaten § 87(2)(b) throughout the incident.

§ 87(2)(g)

Squad: 12

Investigator: \_\_\_\_\_ Chelsea Yogerst \_\_\_\_\_  
Signature Print Date

Squad Leader: \_\_\_\_\_  
Title/Signature Print Date